

FILED

AUG 29 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DELWAYNE DENNY,

Defendant - Appellant.

No. 05-30361

D.C. No. CR-00-00114-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted August 21, 2006^{**}

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Delwayne Denny appeals from the sentence imposed upon revocation of his supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291. Because

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Denny failed to object to his sentence, we review for plain error. *See United States v. Garcia*, 323 F.3d 1161, 1165 (9th Cir. 2003). We affirm.

Denny contends that the district court erred by imposing a sentence that exceeded the sentencing range recommended by Chapter 7 of the Guidelines Manual because the sentence did not address his alcohol or psychological problems, and because the sentence did not comport with the factors listed in 18 U.S.C. § 3553(a). We disagree.

A review of the record indicates that the sentencing judge considered the Chapter 7 policy statements before revoking Denny's supervised release. Because the judge considered the Chapter 7 policy statements, he was then free to reject the suggested 4-10 month sentencing range recommended by Chapter 7. *See United States v. Tadeo*, 222 F.3d 623, 625 (9th Cir. 2000). Additionally, we conclude that Denny's sentence is not unreasonable. *See United States v. Plouffe*, 445 F.3d 1126, 1131 (9th Cir. 2006).

AFFIRMED.